PENTALPHA

September 1, 2021

Chairman Gary Gensler
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Prohibition Against Conflicts of Interest in Certain Securitizations (S7-38-11)

Dear Mr. Gensler:

Pentalpha Surveillance LLC ("***Pentalpha***" and "***we***") is pleased to submit this letter to comment on the proposed rule titled "Prohibition against Conflicts of Interest in Certain Securitizations" (the "**Proposed Rule**"). The Proposed Rule was first issued in 2011 as directed by Section 621 of the Dodd-Frank Act, which prohibits an underwriter, placement agent, initial purchaser, sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security ("**ABS**") from engaging in a transaction that would involve or result in certain material conflicts of interest. This provision seems to be focused on ending material conflicts of interests in securitizations by prohibiting a firm from assembling asset-backed securities, selling those securities to clients, betting against those securities, and then profiting from the ultimate failure of those securities. Considering the recent inclusion of this Proposed Rule to the SEC's Rulemaking Agenda, we wanted to submit these comments for the SEC's consideration.

As background, Pentalpha and its affiliates are governance specialists. We are primarily dedicated to providing independent oversight of loan securitization trusts' ongoing operations, and we have been engaged by individual securitization trusts, financial institutions, institutional investors and agencies of the U.S. Government. In addition, our principal, James Callahan, served as Co-Chair of the U.S. Treasury's Deal Agent Committee, which was an informal working group of industry representatives who participated in a series of discussions facilitated by the U.S. Treasury as part of its Private Label Securitization ("***PLS***") Initiative. The Treasury's PLS Initiative provided a forum for a large number of industry participants (investors, mortgage originators and aggregators, mortgage servicers, trustees, potential Deal Agents and rating agencies) to address several life-of-trust topics, including: loan quality representations and warranties enforcement, loan collections supervision and the role of the trustee. Our comments below are informed by those investor and other participant comments.

We applaud the SEC's continued focus on modern governance protocols within public and private sector securitized instruments. Our comments are focused in further refining the proposed rule in order to (1) help ensure investors are adequately protected from material conflicts of interest, which are strictly prohibited under the rule, and (2) introduce a low-cost solution to help ensure the deal parties do not run afoul of the rule inadvertently.

By way of background, the "Operating Advisor" is an independent third party that was introduced in CMBS transactions shortly after the financial crisis to provide additional oversight of the special servicer with respect to the resolution and liquidation of specially serviced loans. Essentially, the Operating Advisor provides an investor protection role against potential conflicts

of interest in special servicing. (For example, if the special servicer has an affiliation with the B-piece buyer or the controlling noteholder.) The Operating Advisor role has been successfully hardwired into the risk retention rule and is now involved in all CMBS deals, public and private, when a sponsor offloads some or all of its required risk retention piece to a third party.

While the Operating Advisor provides oversight of specially serviced loans, the Operating Advisor in public securitizations will often also serve as the "Asset Representations Reviewer," which provides loan quality asset representations and warranties oversight. This oversight was implemented by the SEC for shelf eligibility on Form SF-3 to address investors' concerns about the effectiveness of contractual provisions related to the representations and warranties about the pool assets and the lack of responsiveness by sponsors and other parties to the transaction about potential breaches. Again, this is an investor protection role.

Recommendation

Given the strict prohibition in the statute for activity that would constitute a "material conflicts of interest" as well as the potentially significant interpretive issues that are likely to arise with respect to what constitutes a "material conflict of interest," we recommend a solution to help **bridge the gap** between these two issues through an independent governance specialist that is already in many securitizations. Specifically, we recommend the SEC ask for public input (i.e., include a question in any re-proposal of the rule) on the usefulness of a safe harbor framework for interpretive issues whereby an underwriter, placement agent, initial purchaser, sponsor, or any affiliate or subsidiary of any such entity would be entitled to rely on a governance specialist's judgment as to whether a transaction would involve a material conflict of interest. The Operating Advisor is already required to act on behalf of investors with respect to its existing duties, so tacking on this additional task to the Operating Advisor could be a low-cost solution, while also minimizing the market disruption that could result without a safe harbor. As such, we recommend the SEC include a question in any re-proposal of the rule as to the benefits and costs of an independent third party, such as the Operating Advisor, providing a safe harbor for compliance. We also suggest the SEC request comment on the appropriate protocols that could be implemented to ensure investors are adequately protected from material conflicts of interest while also ensuring the deal parties with reasonable certainty that they are complying with the rule.

We greatly appreciate the SEC's consideration of this important disclosure / governance issue. If the SEC or the Staff desires, we would be happy to discuss further any of the points in this letter.

Sincerely,

Don Simon
Chief Operating Officer
Pentalpha Surveillance LLC